

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 05-780 (DSD/SRN)

Eric Bradley,

Petitioner,

v.

ORDER

J.F. Caraway,

Respondent.

This matter is before the court upon petitioner's objections to the report and recommendation of United States Magistrate Judge Susan Richard Nelson, dated April 25, 2005. In her report, the magistrate judge concluded that petitioner's application for habeas corpus relief should be dismissed.

The court reviews the reports and recommendations of the magistrate judge de novo. 28 U.S.C. § 636(b)(1)(C). After a thorough review of the entire file and record, the court finds that the magistrate judge's report and recommendation is well-reasoned and correctly applies the law to petitioner's claim brought under 28 U.S.C. § 2241. Petitioner argues that the magistrate judge erroneously recharacterized his petition as a motion pursuant to 28 U.S.C. § 2255 without first giving him notice and the opportunity to withdraw his petition. See Castro v. United States, 540 U.S. 375, 383-84 (2003). However, the magistrate judge did not construe petitioner's motion as a section 2255 motion because the one-year

statute of limitations has expired. Therefore, the rule in Castro does not apply.

Petitioner also objects to the magistrate judge's conclusion that the new constitutional rule of criminal procedure set forth in Booker does not apply retroactively to matters on collateral review. However, the Eighth Circuit Court of Appeals recently held that "Booker does not apply to criminal convictions that became final before the rule was announced." Never Misses A Shot v. United States, -- F.3d --, 2005 WL 1569403, at *2 (8th Cir. July 7, 2005) (per curiam). Therefore, petitioner's objection is rejected. The court adopts the report and recommendation of the magistrate judge in its entirety.

Accordingly, **IT IS HEREBY ORDERED** that petitioner's application for habeas corpus relief under 28 U.S.C. § 2241 [Doc. No. 1] is summarily dismissed.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: August 2, 2005

s/David S. Doty
David S. Doty, Judge
United States District Court